

Testimony by  
Gary Gensler, Chairman  
on behalf of the  
Commodity Futures Trading Commission

Before the United States Senate  
Subcommittee on Financial Services and General Government

Committee on Appropriations

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Thank you, Chairman Durbin, Ranking Member Collins, and other members of the Subcommittee. I am pleased to be here to testify on behalf of the Commodity Futures Trading Commission, and I appreciate the opportunity to discuss issues related to the Commission's 2010 Budget. I am also grateful to have had each of your individual support for my recent confirmation. It is a great honor to serve my country in this capacity.

I come before you today having only served as CFTC Chairman for six calendar days, but with the full knowledge of the failures of our financial regulatory system; failures that affected all Americans and failures that we must ensure never occur again.

The last decade, and particularly the last 21 months, has taught us much about the new realities of our financial markets. We have learned the limits of foresight and the need for candor about the risks we face. We have learned that transparency and accountability are essential and that only through strong, intelligent regulation can we fully protect the American people and keep our economy strong.

As Chairman of the CFTC, I will use every tool and authority available to protect the American people from fraud, manipulation and excessive speculation. I also look forward to working with Congress to establish new authorities to close the gaps in our laws and bring much-needed transparency and regulation to the over-the-counter derivatives market. I firmly believe that doing so will strengthen market integrity, lower risks, protect investors, promote transparency and begin to repair shattered confidence in our financial markets.

I would like to thank the Committee for the \$146 million recently appropriated for the CFTC for the 2009 Fiscal Year and special thanks to Chairman Durbin for visiting our Chicago office last year. As a result of this much needed boost in funding, the Commission has begun to address our alarming staffing levels; levels that recently reached historic lows.

At present, the Commission employs about 500 career staff -- roughly equivalent to when the Commission was created in 1975. Three decades later, the futures market has changed in every way: with respect to volume, complexity, risk and locality. What was once a group of regional

domestic markets trading a few hours five days a week is now a global market trading 24/7, and what was once just a \$500 billion dollar business has exploded to a \$22 trillion dollar annual industry.

Ten years ago, the CFTC was near its peak staffing level at 567 employees, but shrunk by 20% over the subsequent eight years before hitting a historic low of 437.

With the increase in FY 2009 funding the CFTC can reach 572 employees.

While this is a start, I believe that merely raising our staffing levels to the same as a decade ago will not be enough to adequately fulfill all of the agency's missions. In the last ten years, trading volume went up over five fold. The number of actively traded futures and options contracts went up over six fold, and many of these are considerably more complex in nature. We also moved from an environment with open-outcry pit trading to highly sophisticated electronic markets.

In addition to the dramatic evolution of the futures industry, we have experienced the worst financial crisis in 80 years. We also experienced, in my view, an asset bubble in commodity prices. The staff of the CFTC is a talented and dedicated group of public servants, but the significant increase in trade volume and market complexity, as well as rapid globalization, commands additional resources to effectively protect American taxpayers.

For all of these reasons, I feel it is appropriate for our staffing levels and our technology to be further bolstered to more closely match the new financial realities of the day.

In short, despite the recent increase in funding, the Commission remains an underfunded agency. The President's Budget recommendation of \$160.6 million dollars is recognition of this need. Specifically, the Commission needs more resources to hire and retain professional staff and develop and maintain technological capabilities as sophisticated as the markets we regulate.

I'd like to identify some of my priorities and provide some illustrations of how resource limitations have constrained the Commission. Among my priorities will be to:

- Ensure robust enforcement of our laws. Currently, the Commission's enforcement program consists of 122 employees --- the lowest level since 1984. Though FY 2009 funding will get us back to 141 enforcement employees, this is still below the agency's peak of 167 and well below what we need given the current financial turmoil. Any financial downturn reveals schemes that could only stay afloat during periods of rising asset values. Our current, and much larger, downturn is exposing more leads than the Commission can thoroughly and effectively investigate. This is true both as it relates to fraud and Ponzi schemes as well as staff intensive manipulation investigations. The regulations we enact to protect the American people are meaningless if we do not have the resources to enforce them;
- Ensure greater transparency of the marketplace. Also, I believe that commodity index funds and other financial investors participated in the commodity asset bubble. Notably, though, no reliable data about the size or effect of these influential investor groups has

been readily accessible to market participants. The CFTC could promote greater transparency and market integrity by providing further breakdowns of non-commercial open interests on weekly “Commitments of Traders” reports. The American public deserves a better depiction of the marketplace. The temporary relief from higher prices does not negate this need, especially given that a rebounding of the overall economy could lead to higher commodity prices;

- Ensure position limits are consistently applied. The CFTC has begun a review of all outstanding hedge exemptions to position limits. This review will consider the appropriateness of these exemptions and look for ways to institute regular review and increased reporting by exemption-holders. The Commission also has begun a review of the process and standards through which no-action letters are issued. As part of these reviews, CFTC staff will consider the extent to which swap dealers should continue to be granted exemptions from position limits;
- Ensure the Commission has the tools to fully monitor the markets. We must upgrade the Commission’s mission critical IT systems for the surveillance of positions and trading practices. Neither is robust enough nor have they been upgraded to reflect the vast increase in volume and complexity. Our systems must begin to produce the surveillance reports needed to meet the analytical needs of our professional staff and the transparency needs of the public; and finally,
- Ensure timely reviews of the many new products and rule change filings of the futures markets. These have lagged due to the growth and complexity of markets and the added responsibilities extended to the Commission in the 2008 Farm Bill. The Farm Bill requires staff to review all contracts listed on Exempt Commercial Markets (ECMs) to determine if they are significant price discovery contracts -- if they are, then any ECM that lists such a contract must also be reviewed to determine compliance with a stringent set of core principles under the Commodity Exchange Act.

Other examples that I believe are illustrative of the difficult tradeoffs caused by resource constraints are:

- The Commission does not conduct annual compliance audits of every Designated Contract Market (DCM)– rather only periodic reviews on average, every three years;
- The Commission does not conduct annual compliance audits of every Derivatives Clearing Organization (DCO) --- rather periodic reviews are conducted of selected core principles that are rotated and completed every three years; and,
- The Commission does not conduct routine examinations of Commodity Pool Operators, Commodity Trade Advisors, and Futures Commission Merchants – a function currently performed by Self Regulatory Organizations. If the Commission were to perform direct periodic audits our staff would better understand the operations of brokers and managed funds and could better assess compliance with the law and regulations.

These are only a few of our important funding priorities and the workload challenges imposed by resource limitations. There are, of course, others. I hope that this helps the Committee to understand, in a tangible way, the challenges the Commission faces in regulating the futures markets the way the Nation requires.

Although the work of the Commission can be highly technical in nature, the mission of the agency is quite straightforward. The CFTC is charged with:

1. Protecting the public and market users from manipulation, fraud, and abusive practices and
2. Promoting open, competitive and financially sound futures markets.

With that context, I would like to address the specifics of the FY 2010 Budget request. The FY 2010 Budget proposes an increase of \$14.6 million. Approximately half of the increase is needed to maintain our FY 2009 level of operations into FY 2010. The balance would fund an additional 38 positions.

Twenty-six of the 38 staff would be allocated to principal program areas. Specifically, we would allocate eleven positions to Enforcement, eight to Market Oversight, six to Clearing and Intermediary Oversight, and one to the Chief Economist's office. The remaining twelve positions will provide critical mission support in the areas of legal analysis and counsel, technology support, international coordination, legislative and public outreach, and human capital and management support.

The additional 38 positions are essential to addressing some of the limitations I mentioned earlier. This increase, however, will not provide the Commission with the critical mass of professional and technical expertise needed to ensure that the growing markets remain free of manipulation and fraud.

For example, our enforcement staff needs to be significantly expanded to:

- Ensure that crimes are punished to the fullest extent of the law;
- Develop strategies aimed at quickly identifying and eradicating fraudulent schemes, such as Ponzi and foreign exchange "boiler rooms"; and
- Importantly, pursue resource-intensive investigations and litigations involving manipulation, including energy-related market abuses, so wrongdoers will not believe they are immune from enforcement simply due to the complexity of an enforcement action.

Insufficient resources in the enforcement division force it to be too selective in the matters it investigates.

Our market oversight operation needs additional highly-skilled economists, investigators, attorneys and statisticians to:

- Analyze trading reports quickly and thoroughly, identify potential market problems or trader violations promptly, and avoid market disruptions and pricing anomalies;
- Conduct timely and complete reviews of regulated entities to ensure compliance with all core principles;
- Examine exchange self-regulatory programs on an on-going and routine basis with regard to trade practice and market surveillance; and
- Ensure their compliance with disciplinary, audit trail, record-keeping and governance obligations.

Our clearing and intermediary oversight program needs additional auditors, analysts, and attorneys. This would allow us to:

- Ensure clearing systems protect against a single market becoming a systemic crisis;
- Protect investors' funds from being misused or exposed to inappropriate risks of loss; and
- Guard against abusive sales practices that harm customers and undermine market integrity.

Our economic research program needs more economists to review and analyze new market structures and off-exchange derivative instruments, especially in light of novel and complex products and practices that call for state-of-the-art economic analysis. Further, additional resources would enhance our economic and statistical analysis, improving transparency of markets and better supporting the Commission's enforcement and surveillance programs.

We also need to transform the current legacy information technology systems into robust systems capable of efficiently receiving and managing massive amounts of raw data as well as transforming them into useful analytical and research tools.

The Commission has made a substantial investment in technology over the past two years – focusing first on upgrading obsolete computer hardware to industry standards. We need technology, however, that is as modern and dynamic as the technology-driven markets we are charged with overseeing. Our investment in technology must be more than just periodic equipment upgrades and maintenance. The Commission must leverage resources by employing 21st century technology to protect the American people.

As the Commission informed this Committee in February of this year, the agency believes it needs \$177.7 million for FY 2010 to perform its present duties. I look forward to working with this Committee to secure the funding necessary to meet our current regulatory responsibilities.

Before I close, I would like to briefly highlight funding needs that might go along with much needed regulatory reform. The CFTC along with the Administration and other financial regulators is committed to working with Congress on broad regulatory reform. This is particularly true for the markets that the CFTC currently regulates and the markets that may soon come under our regulation.

Specifically, we must urgently to regulate the over-the-counter derivatives market and address excessive speculation through aggregated position limits.

President Obama has called for action by the end of this year to strengthen market integrity, lower risks, and protect investors. The future of the economy and the welfare of the American people depend on a vibrant Commission to assist in leading the regulatory reform ahead. Additional funding will be necessary to properly implement these reforms.

I look forward to working with the Members here today and others in Congress to accomplish this goal.

Thank you very much. I would be happy answer any questions you may have.